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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,886	12/28/2001	Jay D. Hodson	24180-907000	1633
7590 07/08/2004			EXAMINER	
Stephen T. Scherrer McDermott, Will & Emery 227 West Monroe Street Chicago, IL 60606-5096			RHEE, JANE J	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/034,886	HODSON ET AL.	
	Examiner	Art Unit	
	Jane J Rhee	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-50 and 70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-50 and 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Rejections Withdrawn

1. The 35 U.S.C. 102 (b) rejection anticipated by Huizinga of claims 31,38-46 are withdrawn due to applicant's amendment in response 4/22/2004.
2. The 35 U.S.C. 103(a) rejection over Huizinga in view of Schlaeppi of claims 32-37,49-50 are withdrawn due to applicant's amendment in response 4/22/2004.
3. The 35 U.S.C. 103(a) rejection over Huizinga in view of Bailey of claims 47 and 48 are withdrawn due to applicant's amendment in response 4/22/2004.

Response to Arguments

4. Applicant's arguments with respect to claims 31-50,70 have been considered but are moot in view of the new ground(s) of rejection.

New Rejection

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 38 recites the limitation "said portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 31,33-35,38-46,70 are rejected under 35 U.S.C. 102(e) as being anticipated by Strand et al. (6360513).

Strand et al. discloses a flexible thermoplastic polymeric film comprising a plurality of layers (figure 20 number 206 and 35), a surface of the flexible film comprising a coordinate system having a machine direction and a transverse direction perpendicular to the machine direction (figure 5 number 12) and a first laser scored pattern on the surface of the flexible film wherein the first laser scored pattern is disposed in both the machine direction and the transverse direction of the surface of the flexible film wherein the first laser scored pattern forms a first line of weakness in the flexible film running continuously in the machine direction of the flexible film (figure 5 number 12). Strand et al. discloses that the present invention relates to recloseable plastic bags therefore the first layer comprising a material of plastic (col. 7 line 64). Strand et al. discloses that the first layer forms an outer layer of the flexible film (figure 5 number 10). Strand et al. discloses a second layer comprising a material selected from group consisting of adhesive (col. 11 line 47-48). Strand et al. discloses that the second layer does not have the first laser scored pattern etched therein (col. 11 line 49). Strand et al. discloses that the first laser scored pattern comprises a first portion that is straight and parallel to the edge of the flexible film wherein the edge runs in the machine direction (figure 5 number 12). Strand et al. discloses that the first laser scored pattern

comprises a first portion and a second portion, wherein the first portion is displaced from the second portion in the transverse direction of the surface of the flexible film (figure 5 number 12). Strand et al. discloses the first laser scored pattern comprises a recurring pattern in the machine direction of the surface of the flexible film (figure 5 number 12). Strand et al. discloses that the first portion is a straight line disposed in the machine direction of the surface of the flexible film (figure 5 number 21). Strand et al. discloses that the first portion and the second portion form a continuous score line (figure 5 number 12). Strand et al. discloses that the second portion is displaced toward the first edge of the flexible film relative the first portion (figure 5 number 12). Strand et al. discloses a recurring symbol on the surface of the flexible film for indicating where to apply the first laser scored pattern on the face of the flexible film (figure 5 number 24). Strand et al. discloses a second laser scored pattern on the surface of the flexible film wherein the second laser scored pattern is disposed in the machine direction and the transverse direction of the surface of the flexible film and further wherein the second laser scored pattern forms a second line of weakness in the flexible film (figure 5 number 12). Strand et al. discloses that the first laser scored pattern is disposed proximate a first edge of the flexible film and further wherein the second laser scored pattern is mirror image of the first laser scored pattern and further wherein the second laser scored pattern is disposed proximate a second edge of the flexible film (figure 5 number 12). Strand et al. discloses a flexible film comprising an outer material of (figure 17 number 100) and a barrier layer (figure 17 number 16b).

As to the continuous line of weakness that is disposed in the flexible film in both the machine and transverse directions of the flexible film by a laser beam with out refocusing the laser beam is a process limitation wherein determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 32,36,49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. in view of Schlaeppi (EP 0596747).

Strand et al. discloses the plastic film described above. Strand et al. teaches a plastic outer layer and an inner barrier layer that are sealed together (figure 17 number 16b and 100). Strand et al. fail to disclose an outer layer film comprising a material of oriented polypropylene and a barrier layer of ethylene vinyl alcohol copolymer where in the outer layer and barrier layer are laminated together by an adhesive. Schlaeppi teaches an outer layer film comprising a material of oriented polypropylene and a barrier layer of ethylene vinyl alcohol copolymer wherein the outer layer and barrier layer are laminated together by an adhesive (col. 4 line 19-25) for the purpose to provide a

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multilayer packaging film wherein the barrier layer can impart functional characteristics to the package such as oxygen barrier properties or moisture barrier properties and wherein the outer layer is provided with a suitable polymer material comprising a high melting point in order to heat seal the package (col. 4 line 25-32).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Strand et al. with an outer layer film comprising a material of oriented polypropylene and a barrier layer of ethylene vinyl alcohol copolymer wherein the outer layer and barrier layer are laminated together by an adhesive in order to provide a multilayer packaging film wherein the barrier layer can impart functional characteristics to the package such as oxygen barrier properties or moisture barrier properties and wherein the outer layer is provided with a suitable polymer material comprising a high melting point in order to heat seal the package together (col. 4 line 25-32).

8. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. in view of Bailey (6544629).

Strand et al. discloses the flexible thermoplastic polymeric film described above. Strand et al. fail to disclose that the first line of weakness in the flexible film has a tensile strength measured across the line of weakness of between about 3 lb/in. and about 10lb/in, preferably 6.5lb/in. Bailey discloses that the first line of weakness in the flexible film has a tensile strength measured across the line of weakness of between 6 to 16 lbs/inch for the purpose of enabling separation between adjacent laminate structures (col. 1 lines 60-64).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Strand et al. with the first line of weakness in the flexible film that has a tensile strength measured across the line of weakness of between 6 to 16 lbs/inch in order to enable separation between adjacent laminate structures (col. 1 lines 60-64) as taught by Bailey.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

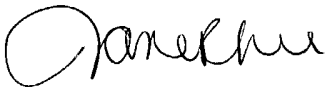
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee
July 1, 2004


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

7/6/04